

REMARKS

In reply to the Office Action of May 28, 2004, applicant submits the following remarks. Claims 1, 3-12, 14-15, and 17-26 have been amended. Claims 29-34 have been added. No new matter has been added. Claims 2, 13, 16, and 27-28 are cancelled. Claims 1, 3-12, 14-15, 17-26, and 29-34 are now pending after entry of this amendment. Applicant respectfully requests reconsideration in view of the foregoing amendment and these remarks.

Objections to the Drawings

The specification has been amended to added the references numbers 430, 910, 1014 and 1214. Reference number 1210 has been removed from FIG. 12. No new matter has been added with the additions to the specification. The applicant believes these actions address the Examiner's concerns.

Section 112 Rejections

Claims 1, 3-12, 14-15, and 17-26 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Regarding claim 1, a step of predicting the future usage levels has been added to the claim. Regarding claim 15, a limitation to instructions operable to cause a processor to predict the future usage levels has been added.

Regarding claims 3 and 17, reference to the customer has been replaced in the claims by a user. Claim 3 depends from claim 1. The preamble of claim 1 defines a network-enabled exercise device as including an exercise device. Claim 17 is the corresponding apparatus claim and is similarly amended.

Regarding claim 14, the term "steps" has been added.

The applicant believes the above amendments to the claims respond to the claim rejections and that the claims as amended are no longer indefinite. The applicant thanks the Examiner for providing the applicant an opportunity to correct the claim language.

Section 101 Rejections

Claim 1 has been amended to address the Examiner's concerns that the claim was not directed to statutory subject matter. Claim 1 now recites a method including a step of receiving information for predicting a future usage level of a network-enabled exercise device over a computer accessible network. The applicant believes this amendment addresses the Examiner's concerns.

Section 103 Rejections

Claims 1-7 and 14-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Netpulse Press Release, March 1, 1999, (Netpulse) in view of U.S. Patent No. 6,532,281 (Schoenborn). The applicant respectfully disagrees.

Amended claim 1 recites a method of pricing a network-enabled exercise device. A future usage level of the network-enabled exercise device is predicted, wherein the future usage level is related to a future revenue that is generated in part by usage of the network-enabled device. A price is calculated for the network-enabled exercise device, such that the price is related to the future usage level of the network-enabled device.

Schoenborn describes a method of pricing a flat-rate value for communication tariffs (Abstract). Communication profiles are measured (col. 3, lines 53-58). Profiles for individuals or groups are created from the measurements (*id.*). The profiles are converted into invoice amounts, calculated at a flat-rate (col. 3, lines 59-67). The invoices can be billed bimonthly or over a one-year period (col. 4, lines 5-7).

Netpulse describes exercise equipment with computer displays that provide Internet and e-mail access. Advertisers can send content to the computer displays. Because particular demographics of people tend to join health clubs, advertisers can target particular groups of consumers with the content displayed on the computer displays.

Shoenborn teaches calculating a price for an on-going service. The flat-rate price is based on either consumption data or on an estimation on the basis of statistical data from

customer profiles. Shoenborn does not teach calculating a purchase price for a device, where the price is related to a future revenue that is generated in part by usage of the device. Netpulse also does not suggest calculating a price for a device such that the price is related to a future revenue that is generated in part by usage of the network-enabled device.

For at least this reason, the applicant submits that no *prima facie* case of obviousness has been made with respect to amended claim 1. Claims 2-12 and 14 depend directly or indirectly from claim 1 and are similarly not obvious. Amended claim 15 is a corresponding apparatus claim that includes a computer-readable storage medium with instructions for pricing a network-enabled device. The applicant submits that amended claim 15 is not obvious for at least the reason provided with respect to claim 1. Claims 16-21 depend from claim 15 and are similarly not obvious.

Claims 8-12 and 22-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Netpulse in view Schoenborn and further in view of U.S. Patent No. 6,442,529 (Krishan). The applicant respectfully disagrees.

Claims 8-12 depend from claim 1 and include the limitations of claim 1. Krishan also fails to suggest calculating a purchase price for a device such that the purchase price is inversely related to amounts of content that will be viewed on the device. For at least this reason, the applicant submits that no *prima facie* case of obviousness has been made with respect to claims 8-12.

New Claims

Claims 29-34 are new. No new matter has been added. Claims 29-30 depend directly or indirectly from claim 1, claim 31 depends directly or indirectly from claim 30, claims 32-33 depend directly or indirectly from claim 14, and claim 34 depends directly or indirectly from claim 33. The applicant submits that the new claims are allowable for at least the reasons provided above.

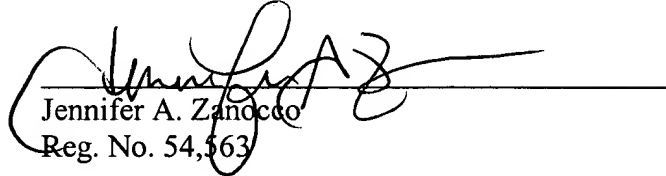
Applicant : Cohen et al.
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Enclosed is an \$18.00 check for excess claim fees. Please apply any other appropriate charges or credits to deposit account 06-1050.

Respectfully submitted,

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Amendments to the Drawings:

The attached replacement sheet of drawings includes changes to Fig. 12 and replaces the original sheet including Fig. 12.

In Figure 12, reference number 1210 has been deleted.

Attachments following last page of this Amendment:

Replacement Sheet (1 page)
Annotated Sheet Showing Change (1 page)